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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 353

SMITH-JOHNSON STEAMSHIP CORP., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Claims of March 6, 1956 (Pet. 7a–13a), is reported at 139 F. Supp. 298, certiorari denied, 351 U. S. 988. The opinion of the Court of Claims of July 12, 1956 (Pet. 4a–6a), is reported at 1956 A. M. C. 1291.

JURISDICTION

The order of the Court of Claims was entered on July 12, 1956 (Pet. 4a, 6a). The petition for a writ of certiorari was filed on August 28, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

1. Whether this Court should re-examine the firmly

established rule that the jurisdiction of the admiralty courts under Sections 1 and 2 of the Suits in Admiralty Act is exclusive.

2. Whether this Court should re-examine its recent decision in *Sword Line* v. *United States,* 351 U. S. 976, holding that admiralty has jurisdiction over an action seeking recovery on an alleged overpayment of charter hire.

STATUTES INVOLVED

The Suits in Admiralty Act of March 9, 1920, 41 Stat. 525, provides in pertinent part:

Section 1 (46 U. S. C. 741):

> * * * That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

Section 2 (46 U. S. C. 742):

> That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the

> case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. * * *

STATEMENT

This is the second time petitioner has requested this Court to review the jurisdictional issues presented by this case. See also No. 898, October Term, 1955, certiorari denied, 351 U. S. 988.

The gist of petitioner's complaint, filed in the Court of Claims, is that it chartered from the United States certain war-built vessels under the Merchant Ship Sales Act of 1946 and the Merchant Marine Act of 1936, and that it had been overcharged because the charter hire had been computed in violation of statutory directions.

The Government's answer set up, among others, the special defense that the subject matter of the litigation was under the exclusive jurisdiction of the admiralty courts by virtue of the Suits in Admiralty and Public Vessels Acts. In its decision of March 6, 1956 (Pet. 7a–13a), the Court of Claims granted petitioner's motion to strike this defense. Although this interlocutory decision was favorable to it, petitioner asked this Court to review the case before final judgment in the Court of Claims (No. 898, October Term,

1955). The United States opposed that petition on jurisdictional grounds, and this Court denied the writ (351 U. S. 988).

On the same day, this Court handed down its decision in *Sword Line* v. *United States,* 351 U. S. 976, a libel in admiralty also seeking the recovery of allegedly excessive charter hire collected in violation of the mandate of the Merchant Ship Sales and Merchant Marine Acts. This Court, relying on its recent decision in *Archawski* v. *Hanioti,* 350 U. S. 532, held that the "libel, though dependent on a statute, alleges unjust enrichment from a maritime contract", and that, consequently, admiralty had jurisdiction over it.

After this Court's decision in *Sword Line,* the Court of Claims reconsidered its decision of March 6, 1956, and by order dated July 12, 1956, granted the Government's motion to dismiss for lack of jurisdiction (Pet. 4a–6a). It held that, inasmuch as this Court had established in *Sword Line* that petitioner's cause of action was justiciable under the Suits in Admiralty Act, that remedy precluded the jurisdiction of the Court of Claims under the Tucker Act.

ARGUMENT

Petitioner seeks to present two issues which have been firmly settled by this Court. The rule that a suit to recover an alleged overcharge under a maritime contract is of admiralty jurisdiction has been reaffirmed by two decisions of this Court this last term. Similarly, the rule that the remedy provided

by the Suits in Admiralty Act is exclusive has not been questioned by the Courts of Appeals and the Court of Claims, and during the last two terms certiorari petitions seeking to reopen this issue were denied in each instance. We are not aware of a new fact or newly discovered consideration which would justify the reexamination by this Court of either of the two issues.

1. Recognizing that the enactment of the Suits in Admiralty and Public Vessels Acts point to a congressional aim to provide for a uniform procedure in the District Courts—"the accustomed forum in matters of admiralty" (*Calmar S. S. Corp.* v. *United States,* 345 U. S. 446, 455–456)—in all maritime cases in which the United States is subject to suit under those Acts, this Court has determined that the jurisdiction conferred on the District Courts under the Suits in Admiralty and Public Vessels Acts is exclusive. *Johnson* v. *Fleet Corporation,* 280 U. S. 320, 327; *Matson Navigation Co.* v. *United States,* 284 U. S. 352, 356; and see *Calmar S. S. Corp.* v. *United States, supra.* These decisions have been consistently followed by the Court of Claims and by the Courts of Appeals. Only within the past eighteen months this Court has denied four petitions for a writ of certiorari presenting this question. *Waterman Steamship Corp.* v. *United States* (No. 501, O. T., 1954), 348 U. S. 970; *Waterman Steamship Corp.* v. *United States* (No. 502, O. T., 1954), 348 U. S. 971; *Lykes Bros. Steamship Co.* v. *United States* (No. 513, O. T., 1954),

348 U. S. 971; *Agricultural Insurance Company* v. *United States* (No. 455, O. T., 1955), 350 U. S. 912.[1]

This question thus has been settled for a quarter of a century and we are not aware of any compelling reason which would warrant its reexamination at the present time.

2. Section 1 of the Suits in Admiralty Act prohibits, in view of the provision for a libel in personam made in Section 2 of the Act, the arrest or seizure by judicial process of—

1. a vessel owned by the United States,
2. a vessel in the possession of the United States,
3. a vessel operated by or for the United States, and
4. cargo owned or possessed by the United States.

Section 2 of the Act provides that a libel in personam may be brought against the United States "in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained"—in other words, where a cause of action is "characteris-

[1] Petitioner's reliance on *United States* v. *Atlantic Mutual Insurance Co.*, 298 U. S. 483, is misplaced. The Court in that case dismissed a general average claim filed under the Tucker Act for failure to comply with the six-year statute of limitations. Jurisdiction under the Tucker Act existed in that case because the claim could be enforced under neither the Suits in Admiralty Act nor the Public Vessels Act. The Suits in Admiralty Act was inapplicable because the vessel was in the public service (298 U. S. at 488–490); and since the claim accrued on January 19, 1919 (*ibid.* at 490), it could not have been adjudicated under the Public Vessels Act, limited to claims arising after April 6, 1920 (46 U. S. C. 781).

tically within the admiralty jurisdiction". *Matson Navigation Co.* v. *United States,* 284 U. S. 352, 358.

The question thus is whether an action to recover excessive charter hire is within the admiralty jurisdiction. A claim for charter hire is without doubt within the admiralty jurisdiction, and this Court has held in the controlling case of *Sword Line* v. *United States,* 351 U. S. 976, that a refund of allegedly excessive charter hire is equally enforceable in admiralty. Petitioner seeks, in effect, a reconsideration of *Sword Line,* implying that this decision constitutes a departure from well-established doctrine.[2]

Sword Line merely constitutes the reaffirmance of the rule of *Krauss Bros. Lumber Co.* v. *Dimon S. S. Corp.,* 290 U. S. 117, which held that a claim to recover excessive freight charges gives rise to a maritime lien and thus is enforceable in admiralty. *Krauss Bros. Lumber Co.* was followed by *Archawski* v. *Hanioti,* 350 U. S. 532, the direct authority cited in *Sword Line.* As the Court of Appeals pointed out in *Sword Line* v. *United States,* 230 F. 2d 75, 77 (C. A. 2),

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[2] Petitioner argues (Pet. 22) that it should not be penalized because it failed to anticipate the overruling of an existing line of authority. At the time petitioner filed its complaint in the Court of Claims, the point appeared to be concluded by *Krauss Bros. Lumber Co.* v. *Dimon S. S. Corp.*, 290 U. S. 117, and fifteen similar cases already were pending in the admiralty courts. We submit that the majority of those who chose to proceed in the Court of Claims did so because the statute of limitations under the Suits in Admiralty Act had run and because they hoped to discover some legal theory which would entitle them to the benefit of the six-year statute of the Tucker Act.

this Court in *Krauss* disapproved "the narrowness of a distinction that the original charter party may be in admiralty, while refund of an exaction under it may not." Or, as this Court held in *Archawski,* 350 U. S. at 535, admiralty has jurisdiction "so long as the claim asserted arises out of a maritime contract."

We submit that these considerations provide a far more workable line of demarcation between the Tucker Act and the Suits in Admiralty Act than petitioner's suggestion (Pet. 10) that the jurisdiction over refund claims should depend on whether the action is based on principles of general maritime law or on a statute. Such differentiation would merely perpetuate the fine-spun distinctions which this Court has endeavored to eliminate. The Court, it may be noted, has not accepted it with respect to admiralty jurisdiction not involving the Suits in Admiralty and Public Vessels Acts. See *The Hope,* 10 Pet. 108, 119–120; *The J. E. Rumbell,* 148 U. S. 1, 12; cf. *United States* v. *La Vengeance,* 3 Dall. 297, 300.

Petitioner further argues (Pet. 16–17) that the decision below and *Sword Line* cast doubt on a line of cases, also involving maritime transactions, in which the Court of Claims and the District Courts have assumed jurisdiction under the Tucker Act (Pet. 16–18). The short answer to this argument is that jurisdiction under the Suits in Admiralty and Public Vessels Acts requires not only maritime transactions, but transactions arising from a vessel or cargo which is owned, operated, or possessed by the United States. In each

of the cases cited by petitioner (Pet. 16–18),[3] jurisdiction under the Suits in Admiralty and Public Vessels Acts was lacking.[4]

CONCLUSION

The decision below is clearly correct and in accord with controlling precedent. There is no conflict and no need for further review. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1956.

[3] We have shown in note 1, *supra*, that *United States* v. *Atlantic Mutual Insurance Co.*, 298 U. S. 483, does not support petitioner's contentions.

[4] Petitioner suggests that to limit it to a remedy in admiralty amounts in effect to a denial of justice in view of the congested calendar in the Southern District of New York. It seeks to support this argument with the statement that not a single one of the cases of this type filed in the District Courts is at issue, although some of them were filed more than two years ago (Pet. 20–21, n. 12). The reason that none of the cases is at issue is that of the 18 cases filed in the Southern District of New York 13 have been dismissed as time-barred. In two of those cases, the dismissal has become final (*Sword Line* v. *United States*, 351 U. S. 976, *American Eastern Corp.* v. *United States*, 231 F. 2d 664 (C. A. 2), certiorari denied, 351 U. S. 983); eleven are on appeal. In four additional cases, motions to dismiss on the grounds of the time-bar are now pending. Thirteen District Court cases filed outside the Southern District of New York are being held in abeyance pending the outcome of the New York test cases.

U. S. GOVERNMENT PRINTING OFFICE: 1956